town has been run by people from both parties, and, of course, we know the water in this town has all kinds of problems. Yet this is the greatest city in the world. So I think it is basically a stretch and an exaggeration and, of course, a seizure of political opportunity to criticize this administration environmentally in the way some of my colleagues have chosen to do.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

FAIRNESS IN ASBESTOS INJURY RESOLUTION ACT OF 2004—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the motion to proceed to S. 2290, which the clerk will report.

The assistant legislative clerk read as follows:

A motion to proceed to the bill (S. 2290) to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

The PRESIDING OFFICER. Under the previous order, there will be 60 minutes for debate equally divided between the chairman and ranking member of the Judiciary Committee or their designees.

The Senator from Utah.

Mr. HATCH. Mr. President, my colleagues and I have been talking all week about the long overdue reforms that the Hatch-Frist-Miller bill will deliver.

I think it is clear to anybody that asbestos litigation has been spinning out of control with no end in sight for far too long. The shortcomings of the current system are crippling businesses, and, at the same time, depriving asbestos victims of prompt and adequate compensation for their injuries.

One of the most outrageous aspects of the current asbestos litigation system is that it allows—indeed, encourages—some lawyers of questionable ethics to find and bring claims that may be of questionable merit. In some egregious and hopefully rare instances, an entire plan of action has apparently evolved to track down potential claimants based more upon whether they can be properly coached to present a colorable claim than whether their claim has actual merit.

For example, I am told that several years ago, a first-year associate attorney at the law firm of Baron & Budd apparently inadvertently disclosed to defense counsel a memorandum that provides a sad but startling insight into how asbestos claims are created and spun into recoveries.

The memorandum, titled ''Preparing for Your Deposition,'' offers clients detailed instructions. They are shown how to sound credible when giving testimony that they worked with particular asbestos products. The memorandum seems to make every effort to instruct clients to assert particular points that will act to increase the value of their claim, without regard to whether those assertions are actually true. The memorandum even goes so far as to inform clients that a defense attorney will have no way of knowing whether they are lying about their exposure to particular asbestos products.

One excerpt from the memorandum appears to help claimants identify defendant companies and prepares them for a cross-examination that could reveal how flimsy their claim might be. It reads as follows. This is from the Baron & Budd memo ''Preparing for Your Deposition'':

You may be asked how you are able to recall so many product names. The best answer is to say that you recall seeing the names on the containers or on the product itself. The more you thought about it, the more you remembered! If the defense attorney asks you if you were shown pictures of products, wait for your attorney to advise you to answer, then say a girl from Baron & Budd showed you pictures of MANY products, and you picked out the ones you remembered.

Well, as you can see, that is pretty serious. Another excerpt from the memorandum steers claimants away from admissions that would undermine their claims. On this point, the memorandum equips witnesses with the following admonition. Again, from the Baron & Budd memo—one of the leading firms in these asbestos plaintiffs cases, to which more than $20 billion in fees—that is with a ''B''—have been given. Here is this counseling or coaching. Here is what this law firm memorandum said:

You will be asked if you ever saw any WARNING labels on containers of asbestos. It is important to maintain that you NEVER saw any labels on asbestos products that said WARNING or DANGER.

Finally, apparently to drive home the point that cross-examination may be of little value in certain circumstances, the memorandum advises claimants as follows—again, the same law firm:

Keep in mind that these [defense] attorneys are very young and WERE NOT PRESENT at the jobsites you worked at. They have NO RECORDS to tell them what products were used on a particular job, even if they act like they do.

Law Professor Lester Brickman has studied the asbestos litigation process extensively and has written detailed analyses of that process. Professor Brickman reviewed the law firm's memorandum and said:

In my opinion . . . this is subornation of perjury. Now, after the memorandum was discovered, the Dallas Observer conducted an investigation of the Baron law firm's asbestos practices. That investigation appeared to uncover an extensive process geared toward manipulating the asbestos litigation system.

As the Dallas Observer wrote:

Two former paralegals . . . both say that a client-coaching system was in place at the firm. Workers were routinely encouraged to remember seeing asbestos products on their jobs that they didn't truly recall.

Still another aspect of the Dallas Observer investigation into the Baron firm's handling of asbestos cases revealed a process that put a premium on schooling claimants by planting the right bits of information in their heads.

As the Dallas Observer reported:

A paralegal says that in many cases, the client had no specific recollection of some products before she interviewed them. ''My original caseload was a thousand, but I didn't interview that many people. It was in the hundreds. I'd say that probably in 75 percent of those cases I had people identify at least one product they couldn't recall originally.''

Now, manipulation of claimant memories and stories appear to have gone beyond implanting valuable facts to improve their claims. The Dallas Observer found that the Baron law firm also conveniently helped claimants eliminate facts from their stories where that would suit their purpose. The Observer reported the following:

According to the paralegals, their job didn't stop with implanting memories; there were also the asbestos products they had to encourage clients not to recall. Two lawyers told her to discourage identification of Johns-Manville products because the Manville Trust was not paying claims rendered against it at the time. ... Thus, when a client would say he saw, for instance, a Johns-Manville pipe covering, the paralegal says, she would hand them a line. ''You'd say, 'You know, we've talked to some other people, other witnesses, and they recall working with Owens-Corning Kaylo. Don't you think you saw that?' And they'd say, 'Yeah, maybe you're right.'''

Finally, another document obtained by the Observer consisted of handwritten notes apparently taken by a Baron & Budd attorney during an internal training session. I will just say these are the things that are wrong with asbestos litigation. Is this counseling or coaching? The memorandum states: ''Warn plaintiffs not to say you were around it—even if you were—after you knew it was dangerous.''

These practices, if they indeed took place—and I hope they did not take place in the way the Dallas Observer described them in its investigative report—distort a system that is already struggling to provide fairness. If lawyers for purported asbestos victims coach clients to lie in this manner, they may win some big fees for themselves along with some unjustified awards for clients who aren't actually sick, such practices have a sinister effect: They deprive seriously injured asbestos victims of the swift and fair recoveries that they deserve for their injuries and they cheat the payer firm out of money, they cheat employees of these firms out of their jobs, and they cheat investors and individual retirees of these firms out of their investments.

The time to act is now. I urge my colleagues to vote to invoke cloture against the minority's obstructive tactics. We owe it to these victims to put a halt to these abusive practices that